

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARNECIA J JOHNSON**  
Claimant

**STONE CREEK SENIOR PARTNERS LLC**  
Employer

**APPEAL 20A-UI-10448-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20  
Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On August 25, 2020, Stone Creek Senior Partners, LLC (employer/appellant) filed an appeal from the August 14, 2020 (reference 03) unemployment insurance decision that allowed benefits beginning March 29, 2020 based on a finding claimant was able and available for work.

A telephone hearing was held on October 13, 2020. The parties were properly notified of the hearing. Darnecia Johnson (claimant/appellant) participated personally. Employer participated by Executive Director Jenna Gardner.

**ISSUE(S):**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to employer at the above address on August 14, 2020. That was employer's correct address on that date. Employer received the decision on August 17, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 24, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Employer appealed the decision via email on August 25, 2020.

Employer attempted to appeal via fax several times prior to appealing via email but encountered technical difficulties. Gardner first sent a fax on August 21, 2020, a Friday. She did not learn until Monday, August 24, that the fax had not been transmitted successfully. She learned this via an email sent to her from the fax machine. Gardner again tried to appeal via fax on the morning of August 24 and received an email around midday that the fax had not gone through. She tried

again around that time and received an email Friday morning that the fax had not been transmitted. She then emailed the appeal on August 25. It appears from the documents submitted that employer was attempting to fax the appeal to 515-478-3520. The fax number for the appeals bureau, as indicated on the decision, is 515-278-3528.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
  - (b)
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission

was due to division error or misinformation or to delay or other action of the United States postal service.”

Here, employer had ample time to perfect an appeal. The delay in submission was due to employer’s technical difficulties. Specifically, employer failed to successfully fax the appeal to the correct number. While the administrative law judge is sympathetic to employer’s situation, failing to timely submit an appeal due to technical difficulties or inadvertencies is not a good cause reason for an untimely appeal. Employer knew on the deadline date that there were issues with faxing. But instead of mailing or emailing the appeal, employer continued to try to fax the appeal and was unsuccessful in doing so. The delay in appealing was not due to division error or misinformation or to delay or other action of the United States postal service.

The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The employer’s appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The August 14, 2020 (reference 03) unemployment insurance decision that allowed benefits therefore remains in full force and effect.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

October 16, 2020

Decision Dated and Mailed

abd/sam